Of course the right of rescinding the contract for fraud may be exercised only when it is equitable so to do. Hence it cannot be done after the rights of innocent third parties have intervened. But there is no general principle that the rights of creditors of the fraudulent party after the latter's insolvency are superior to the defrauded party's right to rescind.[5] A recent case in Georgia, therefore, seems correct in allowing rescission even after the corporation had become insolvent and a receiver had been appointed. *Gress* v. *Knight*, 68 S. E. 834 (Ga.). It is well settled in England, on the contrary, that rescission will not be allowed after proceedings have been taken to liquidate the corporation's affairs.[6] This result may be attributed to the construction of the Companies Act.[7] Even in the absence of statutes, some courts in this country have squarely adopted the English rule.[8] Rescission has more often not been allowed because of the existence of other equitable grounds for denying such relief. Thus it has been refused when the subscriber has unnecessarily delayed availing himself of this remedy, since it would be inequitable to allow him to retain the option of affirming or rescinding according to which course should prove ultimately the more advantageous.[9] And it is well settled that once he is put on inquiry, he must use due diligence to discover whether he has been defrauded.[10] There have, indeed, been *dicta* making the fault of the defrauded party the only bar to the exercise of the right.[11] In the cases, however, where rescission has actually been allowed, it has not appeared that any new and substantial liabilities were incurred after the subscriber contracted to take stock.[12] As is said in the principal case,[13] the fact that such liabilities had been created should destroy the right to rescind; for a subscriber to stock must know that future creditors of the corporation will rely on his apparent relation to it as a stockholder, as shown by the amount of outstanding capital stock. Therefore when these are subsequent creditors, he should be prevented, after insolvency of the corporation, from escaping his liability to the corporation as a stockholder.[14]

EVIDENCE OF OTHER CRIMES TO PROVE THE DEFENDANT GUILTY OF THE CRIME CHARGED. — Evidence of the defendant's having committed a crime like that for which he is on trial will not be admitted merely because of this similarity.[1] For it by no means follows from the defendant's once having been induced to perpetrate an offense, that he would do it

---

[5] Donaldson *v.* Farwell, 93 U. S. 631.

[6] Oakes *v.* Turquand, L. R. 2 H. L. 325.

[7] The Companies Act of 1862, 25 & 26 Vict. c. 89, §§ 23, 38, 74, provides that any person who has agreed to become a member shall be a contributory.

[8] Moosbrugger *v.* Walch, 89 Hun (N. Y.) 564.

[9] *In re* Estates Investment Co., L. R. 9 Eq. 263.

[10] Tierney *v.* Parker, 58 N. J. Eq. 117.

[11] Upton *v.* Englehart, 3 Dill. (U. S.) 496, 502.

[12] Newton Nat. Bank *v.* Newbegin, 74 Fed. 135; Stufflebeam *v.* De Lashmutt, 83 Fed. 449.

[13] See also Stewart *v.* Rutherford, 74 Ga. 435.

[14] Stufflebeam *v.* De Lashmutt, *supra*.

[1] People *v.* Molineux, 168 N. Y. 264; Boyd *v.* United States, 142 U. S. 450.

again under, perhaps, entirely different circumstances.[2] Furthermore, admission of the evidence would complicate the issues, and prejudice the defendant with the jury.[3] But if the evidence is admissible for some other reason, it will not be rejected merely because it tends to prove the defendant guilty of a crime other than that charged.[4] The first reason for admitting this kind of evidence is to show the state of mind with which the defendant did the principal act, which in these cases he is admitted to have done. Here, the offered evidence is to the effect that he did similar acts with a certain state of mind which is sought to be imputed to the principal act.[5] In the second place, if several criminal acts are all part of one scheme, evidence that the defendant has done some of the other acts is admissible to prove the commission of the act in question.[6] Thirdly, if the evidence shows he committed another crime, and that the same person committed both that and the one which is the subject of the trial, it will be admitted for purposes of identification.[7] In all these cases, it should be observed that the evidence does not merely show that the defendant is a wicked man and therefore likely to commit the crime charged, but bears directly on his guilt in the principal offense.

Two recent cases illustrate another ground on which evidence of other crimes is frequently admitted. In *People* v. *Boero*, 110 Pac. 525 (Cal., Ct. App.), the defendant was indicted for statutory rape, and evidence of previous intercourse with the prosecutrix was admitted; while in *Pridemore* v. *State*, 129 S. W. 1112 (Tex., Ct. Cr. App.), an indictment for incest, such evidence was excluded. The authorities practically unanimously support the former case.[8] The evidence in such cases is introduced to prove the defendant guilty of committing the act charged, and not to show his mental attitude in doing what he was proved to have done, nor to connect the principal act with other parts of a general plan, nor to identify the accused. Its admission is based on the theory that it shows a disposition on the part of the defendant to commit such acts with the prosecutrix, and hence that he is likely to indulge his passion whenever the opportunity is presented.[9] Undoubtedly, the difficulty of proving these charges because the prosecutrix is generally the sole witness has induced the courts to be more ready to accept the evidence.[10] Since the true ground of admission is that it shows a passion for this woman, it should be immaterial whether this feeling was proved by previous or subsequent acts.[11] Furthermore, it is no objection that

---

[2] Shaffner *v.* Commonwealth, 72 Pa. St. 60.

[3] Commonwealth *v.* Jackson, 132 Mass. 16.

[4] Regina *v.* Richardson, 2 Fost. & Fin. 343; People *v.* Peckens, 153 N. Y. 576.

[5] For example, other acts may show that the defendant had a specific intent to defraud, Bainbridge *v.* State, 30 Oh. St. 264, Commonwealth *v.* Lubinsky, 182 Mass. 142; or it may show simply that he had *mens rea*, Commonwealth *v.* Birriolo, 197 Pa. St. 371.

[6] Commonwealth *v.* Robinson, 146 Mass. 571; Commonwealth *v.* Roddy, 184 Pa. St. 274.

[7] Yarborough *v.* State, 41 Ala. 405; People *v.* Ebanks, 117 Cal. 652.

[8] People *v.* Patterson, 102 Cal. 239; Lawson and Swinney *v.* State, 20 Ala. 65.

[9] State *v.* Briggs, 68 Ia. 416; People *v.* Edwards, 73 Pac. 416 (Cal.).

[10] State *v.* Snover, 64 N. J. L. 65.

[11] Thayer *v.* Thayer, 101 Mass. 113; *contra*, Lovell *v.* State, 12 Ind. 18.

the previous offense is barred by the statute of limitations,[12] or was committed in another jurisdiction.[13] But evidence of similar acts with other women is not admissible.[14] It may be said that one who is accustomed to indulge his passions with women generally is more likely to have done so with a particular woman. But the probability is not so strong as in the principal cases. Moreover, evidence of promiscuous intercourse is nothing but evidence of bad character which is excluded whatever its probative force.[15]

RECENT CASES.

ADMIRALTY — TORTS — DAMAGES RECOVERABLE FROM ONE OF TWO VESSELS AT FAULT. — In a collision between vessels A and B in which both were at fault, the cargo on A was damaged. An action was brought, and both vessels were in court. The cargo-owner could probably recover nothing from A. *Held*, that he can recover from B only half of the amount of his damage. *The Drumlanrig*, [1910] P. 249.

At common law, a person damaged by the tort of several tortfeasors can usually get full compensation from any one of them. See *Halsey* v. *Woodruff*, 9 Pick. (Mass.) 555. But *cf.* 23 HARV. L. REV. 406. In the old English admiralty court, however, it was held that only one-half could be recovered from either of two vessels at fault. *The Milan*, Lush. 388. The latest case follows this decision only because it is regarded as establishing an admiralty rule within the meaning of sec. 25, sub-sec. 9 of the Judicature Act, 1873, two of the lords justices admitting that it is indefensible on principle. See *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521. In this country, if both vessels are in court and each is able to pay half, a decree is entered for a moiety against each. *The Sterling and The Equator*, 106 U. S. 647; *The Washington and The Gregory*, 9 Wall. (U. S.) 513. But where the libellant cannot be made whole in this way, the more valuable vessel is held for the balance. *The Alabama and The Game-Cock*, 92 U. S. 695. And even if he libels but one vessel, he is allowed complete compensation from its proceeds, the libellee then having a right of contribution from the other tortfeasor. See *Erie R. Co.* v. *Erie & Western Transportation Co.*, 204 U. S. 220. The same rights are given even where a shipper is barred by the Harter Act from recovering anything against one of the vessels. See 16 HARV. L. REV. 171–177. But see HUGHES, ADMIRALTY, 278, 279. And *cf. The Maine*, 161 Fed. 401.

ALIENS — NATURALIZATION — "FREE WHITE PERSONS." — A Parsee applied for naturalization. *Held*, that he should be admitted. *United States* v. *Balsara*, 180 Fed. 694 (C. C. A., Second Circ.).

For a discussion of the principles involved, see 23 HARV. L. REV. 561.

BANKRUPTCY — PROVABLE CLAIMS — RENT ON UNEXPIRED LEASE. — A lease provided that the lessor could reënter if the rent was not paid or the lessee became bankrupt, and that the lessee should pay the difference between the rent reserved and that collectible from other sources. The lessee became

---

[12] Taylor *v.* State, 110 Ga. 150.
[13] State *v.* Snover, *supra*.
[14] McAllister *v.* State, 112 Wis. 496; Nicholizack *v.* State, 75 Neb. 27.
[15] State *v.* Lapage, 57 N. H. 245.